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FACSIMILE TRANSMISSION

CONFIDENTIAL

DATE: August 5, 2003   CLIENT-MATTER NO.: 21685-06238

TO:

NAME	FAX NO.	PHONE NO.
Firmin Backer Group Art Unit No. 3621 Commissioner for Patents	(703) 305-7687	

FROM: Robert A. Hulse   PHONE: (415) 875-2444

SENT BY: Cheryl Leger   PHONE: (415) 875-2495

RE: Serial No. 09/505,486

NUMBER OF PAGES WITH COVER PAGE: 7	ORIGINAL WILL NOT FOLLOW

MESSAGE:

Please see attached Response After Final.

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21685/06238/SF/5104676.1

(handwritten: H 12, 8-14-03, mel)

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

APPLICANT:	Timothy R. Bratton
APPLICATION NO.:	09/505,486
FILING DATE:	February 16, 2000
TITLE:	AUDIO SYNTHESIS USING DIGITAL SAMPLING OF CODED WAVEFORMS
CONFIRMATION NO:	5826
EXAMINER:	Firmin Backer
GROUP ART UNIT:	3621
ATTY. DKT. NO.:	21685-06238 [6037-003]

CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence, including the enclosures identified below, is being transmitted via facsimile on the date shown below to: Firmin Backer, Group Art Unit No. 3621, Commissioner for Patents, at the facsimile number of (703) 305-7687.

Dated: August 5, 2003 By: _____
Robert A. Hulse; Reg. No. 48,473

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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RESPONSE AFTER FINAL

Sir:

In response to a final Office Action mailed June 2, 2003, Applicant's representative conducted a telephonic interview on August 1, 2003 with the examiner. At the end of the interview, the examiner invited the Applicant to submit a Request for Reconsideration of the final Office Action, summarizing the arguments made during the interview. Accordingly,

Applicant herewith summarizes the arguments made in favor of patentability and respectfully

requests that the examiner reconsider the rejection and allow all pending claims.

Claims 1-49 were presented for examination and were pending in this application. In the

final Office Action, all of the claims were rejected under 35 U.S.C. § 102(e) as anticipated by

U.S. Patent 5,889,860 to Eller et al. As pointed out during the interview, the following claim

limitations are neither disclosed nor suggested by Eller.

1. **Removing Segments From the Media vs. Encrypting a Portion of the Media**
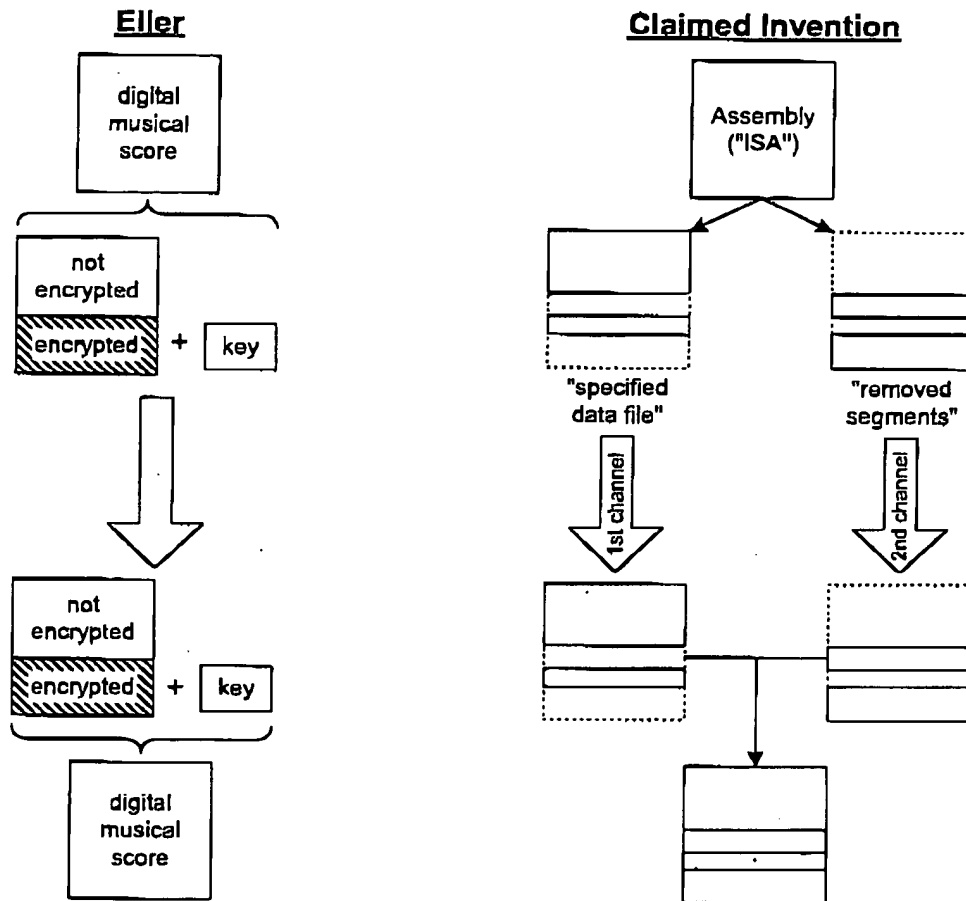**(All Claims)**

Claim 1 includes the steps of "removing one or more selected segments of the assembly,

to produce a specified data file" and "communicating the encoded or encrypted specified data

file in a first selected communication channel and communicating the removed segments in a

second selected communication channel." The claimed invention[1] thus allows an assembly of

information-bearing sounds (e.g., a media file) to be divided into complementary parts: (1) a

"specified data file" and (2) the "removed segments." Because the assembly is divided into these

separate parts, the different parts can be delivered to a user at different times and/or through

different communication channels. After receiving all of the parts, one can reconstruct the

original assembly and access the information-bearing sounds therein.

Eller is fundamentally different. Nowhere does Eller disclose or suggest dividing the

media to be distributed (e.g., by removing segments from a media file). In fact, Eller teaches just

the opposite. In Fig. 4 and col. 8, lines 35-44, Eller's *single* media file is compressed and at least

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[1] The distinctions between claim 1 and Eller described in this section also apply to limitations in the other
independent claims. For example, claim 22 recites, "dividing the digital sound file into first and second data files."
Claims 30 and 44 recite, "receiving an encrypted first data file in a first communication channel," and, "receiving a
second data file in a second selected communication channel." Claim 36 recites, "dividing the digital sound file into
first and sec nd data files."

partially encrypted (step 76), the *single* file is transmitted to a client (step 86), and the *single* file is then decrypted and decompressed by the client software (step 88).

The examiner correctly observed that Eller discloses in one embodiment encrypting only a portion of a media file. However, merely encrypting a portion of a file is not the same as removing segments from the file. The diagram below demonstrates this fundamental difference.

Eller   **Claimed Invention**

In Eller, a single partially encrypted file is delivered to a user, and that single file contains all of the information necessary to recreate the original media file. Accordingly, if someone obtained Eller's partially encrypted file without authorization and hacked the encryption, that person could access the media. In the claimed invention, however, the media is divided into two separate files, neither of which is sufficient to recreate the original file.

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This distinction is important; this claimed feature provides an additional layer of security and enables alternative methods of delivering media that Eller simply cannot perform. For example, because Eller does not divide the media files, Eller cannot send a portion of a media file over a high-bandwidth connection and then send the remaining portion over a low bandwidth connection (e.g., upon a user request). But in the present invention, different portions of the media can be transmitted in different communication channels and/or at different times because of this feature.

2.   Communicating the Separate Parts in Different Communication Channels (Claims 26 and 40)

Because Eller discloses a scheme that is fundamentally different than the claimed invention, it similarly fails to disclose or suggest many of the dependant claim limitations. For example, claims 26 and 40 recite that "the first and second communication channels are different channels." Because Eller does not divide the media into two or more separate parts, it lacks the capability to send the file over two communication channels (e.g., sending a large portion over a high-bandwidth network and sending a smaller portion over a lower bandwidth network) or at different times (e.g., preloading a large portion, and sending a smaller portion later).

3.   "Data Supplement" Containing Information Allowing the Reconstruction of the Separate Parts (Claims 2, 6-8, 12-21, 24, 31, 32 38, 45, and 46)

Claims 2, 6-8, 12-21, 24, 31, 32 38, 45, and 46 recite limitations that include a "data supplement," which allows the media file to be reconstructed. For example, claim 12 recites using the data supplement "to decode or decrypt the encoded or encrypted first data file and to position at least a first sequence and a second sequence, drawn from the second data file, within

the first data file." Claim 32 recites using the data supplement "to position the segments from the first and second data files into the digital sound file."

Eller does not disclose or suggest any such "data supplement." Because Eller does not divide the media into two or more separate parts, it has no need for such a data supplement.

4. **Encryption of Remaining Segments Based on the Removed Segments (Claims 3, 16, 25, 35, 39, and 49)**

Claims 3, 16, 25, 35, 39, and 49 recite encrypting the remaining portion of the media based on information from the removed portions of the media. For example, claims 3, 25, and 39 recites an encryption/encoding key having at least one key parameter that "uses information from at least one of [the] removed segments"; claim 16 recites the step, "determining at least one parameter of said encoding/encryption key using information in said second data file"; claim 31 recites that "at least one parameter of the key determined from information in the second data file;" and claims 35 and 49 recites that "at least one parameter of the key determined from information in the second data file"

In col. 2, lines 22-25, Eller discloses using an encryption key that is related to the customer for tracking purposes. Eller's encryption key is not based on the removed segments of the media file. Indeed, it cannot be, because Eller never removes segments from the original media file in the first place.

Summary

Eller's disclosure is fundamentally distinct from the claimed invention. Eller does not disclose or suggest removing segments from the original media or dividing a media file into at least two files for communication in first and second communication channels. Eller's teaching of encrypting a portion of a file is not the same as removing segments from the file. This is

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underscored by the observation that Eller is completely silent with respect to the dependant claim limitations discussed in Parts 2 through 4 of this paper.

It is therefore believed that the pending claims are in condition for allowance, and a Notice of Allowance is respectfully requested. If the examiner believes that for any reason direct contact with Applicant's representative would help advance the prosecution of any claims in this case to allowance, the examiner is encouraged to telephone the undersigned at the number given below.

Respectfully submitted,
TIMOTHY R. BRATTON

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